

R E C E I V E D
 MOLLY C. DWYER, CLERK
 U.S. COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS
 FOR THE NINTH CIRCUIT

SEP 17 2010

FILED _____
 DOCKETED _____ DATE _____ INITIAL _____

United States of America,
Plaintiff-Appellant,

v.

No. 05-10067

Comprehensive Drug Testing, Inc.
Defendant-Appellee.

Major League Baseball Players Association,
Petitioner-Appellee,

v.

No. 05-15006

United States of America,
Respondent-Appellant.

In Re: Search Warrants Executed
 on April 8, 2004 at CDT Inc.

No. 05-55354

**NON-PARTY MOVANT'S SECOND NOTICE OF PENDING
 MOTION**

Non-Party Journalist Joshua A. Gerstein ("Movant") hereby gives notice that Movant's Motion to Unseal filed November 23, 2005 in the above-captioned cases remains pending before this Court.

Movant's Motion was initially resolved by the panel opinion filed in these consolidated cases. See United States v. Comprehensive Drug Testing, Inc. ("CDT"), 513 F. 3d 1085, 1141 (9th Cir. 2008). See also Id. at 1148-49, (THOMAS, J., concurring in part, and dissenting in part on other grounds).

However, in a subsequent order granting rehearing en banc, the Court appeared to vacate or withdraw the earlier panel opinion. See U.S. v. CDT, 545 F. 3d 1106 (9th Cir. 2008).

The Court's en banc opinion issued in these cases last August did not address Movant's Motion to Unseal. See U.S. v. CDT, 579 F 3d. 915 (9th Cir. 2009) (en banc).

On September 8, 2009, soon after release of that opinion, Movant filed a Notice of Pending Motion alerting the Court to the unresolved Motion.

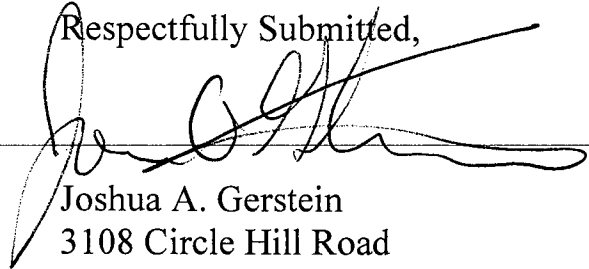
The Court has recently filed a revised en banc opinion. See U.S. v. C.D.T., ____ F. 3d ____ (9th Cir.)(September 13, 2010)(en banc).

However, the revised opinion still does not address or resolve Movant's Motion to Unseal.

While the Court's docket indicates that judgment has been entered in the cases, the Motion to Unseal remains ripe as a legal matter since such a motion may be brought at any time, before or after a case is closed.

In light of the foregoing, Movant again prays that this Court grant or otherwise act upon his Motion, which has now been pending for nearly five years.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Joshua A. Gerstein', is written over a horizontal line. The signature is stylized with a large initial 'J' and a long, sweeping underline.

Joshua A. Gerstein
3108 Circle Hill Road
Alexandria, VA 22305
Tel. (703) 980-5029
Fax. (415) 449-3551
Non-Party Movant, Pro Se

Date: September 14, 2010

PROOF OF SERVICE

The undersigned hereby certifies that on the date noted below the attached notice was served by sending a true copy thereof via First-Class Mail to the offices of each of the following counsel at their address of record:

Mr. Elliot R. Peters, Esq.
Keker & Van Nest, LLP
710 Sansome Street
San Francisco, CA 94111

Ms. Erika R. Frick, Esq.
Mr. Joseph L. Wilson, Esq.
Office of the U.S. Attorney
450 Golden Gate Ave., 11th Floor
San Francisco, CA 94102

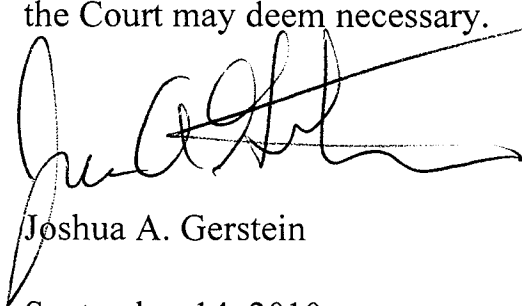
Mr. Ethan R. Balogh, Esq.
Coleman & Balogh
225 Bush Street, Suite 1600
San Francisco, CA 94104

Mr. Gary C. Moss, Esq.
3930 Howard Hughes Pkwy.,
Suite 170
Las Vegas, NV 89101

Mr. David P. Bancroft, Esq.
Sideman & Bancroft, LLP
One Embarcadero Center, Eighth
Floor
San Francisco, CA 94111

Mr. Ronald G. Russo, Esq.
Herzfeld & Rubin, P.C.
40 Wall Street
New York, NY 10005

Since two of the three docket sheets in these consolidated appeals remain under seal and the Clerk has refused Movant access to the pleadings in all of the cases, Movant cannot be certain that this list reflects all counsel of record in the cases. However, Movant is prepared to make any additional service the Court may deem necessary.



Joshua A. Gerstein

September 14, 2010